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Coexistence Legislation in Italy - The Court Steps In 2006

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Report Highlights: The Italian Constitutional Court has recently ruled that Italy's January 2005 Framework Law on Coexistence is unconstitutional. This report contains an informal translation of an article on the subject. The ruling is clearly a setback for those that want to ensure that Italian farmers do not use modern biotechnological seeds.

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Post has been reporting on Italy's slow development of coexistence legislation for biotech and conventional crops over the past 18 months. The process has been slow and complicated because the Minister of Agriculture and most of the major farmer organizations are opposed to allowing the cultivation of GMOs in Italy, and because the authority for regulating the planting of GMOs resides with each of Italy's twenty Regions. While the Italian Parliament passed a coexistence law in January 2005, it provided only the framework in which the Regions would develop their implementing regulations. That law further required an appointed technical committee to develop guidance for the Regions before passing the matter to them. This technical committee was supposed to have made its recommendations public, through the Minister of Agriculture, in October 2005 but no report was issued. On Friday, March 17, 2006 the Tavola AgroAlimentari (Agricultural Roundtable), the consultative body for Italian agricultural policy comprised of all the Regions and farmer and consumer organizations, met to discuss and approve the technical committee guidance. At the same time the Constitutional Court of Italy ruled that the January 2005 law was unconstitutional because it intruded into areas of Regional authority.

With national Italian elections less than three weeks away, it is uncertain how this impasse will be resolved. Whatever the result of the election, it is unlikely that Italy will get a Minister of Agriculture interested in ensuring that Italian farmers have access to even the approved fruits of biotechnology. However, there appear to be, in the absence of Italian legal restrictions, any impediments to Italian farmers deciding to plant EU approved varieties.

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Il Sole-24 Ore, March 18, 2006

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The Constitutional Court has Rejected the Law on Coexistence

The Veto on OGM Falls

The Regions to Decide

The Italian Constitutional Court rejected the law that regulated the coexistence between conventional agricultural production and that obtained from genetically modified seeds (GMO seeds), and indirectly sent into the archives the defacto moratorium, which impeded the introduction of agricultural biotechnology in Italy.

From a constitutional perspective the focus of the issue was the question of competence, recognizing that the Regions have exclusive right to determine the norms on coexistence between the two types of cultivation. But the judges also entered in to the substance of the issue. The decision was published yesterday, on the same day that the Minister of Agriculture, Gianni Alemanno, by coincidence that not everyone considers to be accidental, had convoked six months behind schedule the members of the "Agricultural Roundtable" (NB an advisory body that includes representatives from all the Regions of Italy as well as farmer and consumer organizations) at Palazzo Chigi to present the government's general guidance to the Regions on coexistence. The measures taken by the minister were thus immediately withered. The Constitutional Court has, in fact, only "saved" the first two articles of the (January) 2005 coexistence law, which relate to the freedom of consumers to choose between transgenic and conventional products, and limitations on the cultivation to maintain separate production chains for conventional and organic products. The rest of the law is discarded in the view of the constitutional judges who have decreed that the Regions have the exclusive competency to legislate these matters (of coexistence).

It was the Regional Council of Marche, one of Italy's 13 self-declared "GMO free" regions that appealed against the law. But the tenor of the ruling does not support an anti-biotech position. As so, in an irony of sorts, the law has been riddled by "friendly fire." The ruling is

very well constructed and enters into the substance of the question on GMOs, and makes explicit reference to the imposition of limits to economic initiative, limits that must be justified by verifiable scientific foundations.

At this point, the ball passes to the Regions which have to regulate the matter while keeping in mind the strictures of the Community. The EU Commission, which has declined to create one overarching regulation, and has thrown back to the individual Member States the task of developing national rules for coexistence, has also reaffirmed that regional blanket regulations that forbid the cultivation of GMOs without justification based on risk are not to be enacted. Therefore, the position of the Commission to reject the Austrian notification to absolutely ban the planting of GMOs remains firm.

Europe continues to have little legislation in place on coexistence, with only Germany, Denmark, Portugal and six Austrian Lander having notified Brussels. Italy was just managing, after two years of work, to issue instructions to farmers interested in planting GMO crops, that would include, among other things, buffer zone requirements, which for corn were from a minimum of 200 meters to 1000 meters to guarantee the minimum risk of commingling with organic products, while for soybeans the range runs from 50 to 200 meters. The provisions also define the oversight of production and the process for returning to conventional production. At this point, the text is at risk of remaining a purely legislative exercise. Minister Alemanno said, "the Constitutional Court has opened a dangerous passage for the wide contamination of transgenic materials in regions and areas of quality products that wish to remain GMO-free." The minister has already announced his wish to develop, in cooperation with the Regions, an urgent measure.

The ruling, on the other hand, has been greeted with satisfaction by Assobiotech, the association for the development of biotechnology and part of FederChimica. "Finally, even in Italy," commented the Assobiotech President Roberto Gradnik, "as has already happened during the last two years in other parts of Europe, it is possible to commercialize and use authorized GMOs, through the screen of the most severe rules and rigorous controls existing in the world."

End Article